

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 925

**UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND
LOCAL UNION 5895, UNITED STEELWORKERS OF
AMERICA, AFL-CIO, PETITIONERS**

v.

**NATIONAL LABOR RELATIONS BOARD
AND
CARRIER CORPORATION**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The question presented is whether Section 8(b)(4) (B) of the National Labor Relations Act, as amended, prohibits a union which is engaged in a lawful strike at an industrial plant from picketing at the gate through which a railroad-owned spur track enters and runs adjacent to the plant, for the purpose of inducing persons employed by the railroad not to make normal pickups and deliveries at the struck plant.

(1)

The Board found that such picketing was legitimate primary activity under the principles enunciated in *Local 761, International Union of Electrical Workers v. Labor Board*, 366 U.S. 667, and dismissed the complaint insofar as it alleged a violation of Section 8(b)(4)(B): 132 NLRB 127. The court of appeals (in an opinion by Judge Waterman, with Judge Swan concurring in the result and Chief Judge Lumbard dissenting) set aside the Board's dismissal of the complaint, holding that the picketing was illegal secondary activity. The Board and the Union filed petitions for rehearing *in banc*, which were denied by a vote of a majority of the active judges on the Circuit (Judges Clark, Hays and Smith dissenting). 311 F. 2d 135. The Union, which intervened in the court of appeals, then filed a petition for certiorari.

We believe that the decision of the court of appeals is not only erroneous but incompatible with the principles announced by this Court in *Local 761, supra*. The question of law presented by petitioner is squarely and adequately presented on this record. The importance of the question transcends the particular case, because many industrial plants are served by similar railroad spurs. The Board did not file a petition for certiorari only because the Solicitor General concluded that other cases were entitled to priority in selecting the limited number of cases which the government can properly ask this Court to review.

If the Union's petition for certiorari is granted,
we will defend the Board's order on the merits and
seek reversal of the decision below.

Respectfully submitted.

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APRIL 1963.